

LAND DONATION AGREEMENT
BETWEEN
CITY OF NEWPORT
AND
HABITAT FOR HUMANITY OF LINCOLN COUNTY

This Land Donation Agreement (“**Agreement**”) made and entered into this 20th day of July 2015, by and between the City of Newport, a political subdivision of the State of Oregon, hereinafter known as (“**City**”) and Habitat for Humanity of Lincoln County, a non-profit corporation under ORS 65.001(35) (“**Habitat**”).

RECITALS:

WHEREAS, City lacks an adequate supply of affordable housing, as documented in the 2011 Newport Housing Needs Analysis; and

WHEREAS, as a consequence, it is difficult for individuals and families to find housing within the city limits, which negatively influences long term growth of the economy; the City’s ability to attract and retain employees and employers; emergency response times by emergency personnel living outside the city; and reinvestment in the economy by community members who spend more on housing; and

WHEREAS, consistent with Goals 1 and 2 of the Housing Element of the Newport Comprehensive Plan, City is committed to actively participating in the development of affordable, owner-occupied housing; and

WHEREAS, to this end, as authorized by ORS 271.330 and Newport Municipal Code Section 2.25.090, City intends to relinquish title to City-owned real property identified as Lot 7 and Lot 8, Block 40; a portion of Lot 13 and Lot 14, Block 41; and Lot 3 and Lot 10, Block 33 Case and Bayley’s Second Addition to the City of Newport (“**Property**”) at no cost to Habitat for the construction of owner-occupied, affordable housing units; and

WHEREAS, Habitat, as a qualified non-profit organizations under ORS 271.330(2)(b)(A), is an ideal partner for City in that the organization has a proven track record of constructing affordable, owner-occupied housing units in Lincoln County. Further, Habitat will place restrictive language in the trust deeds that it records against the Property once units are constructed that will limit the resale value of the new homes to an amount attainable by an individual or family making 80% of the medium family income. Such a limitation will remain in place for a period of 20-years to ensure long term affordability; and

WHEREAS, Habitat further possesses the organizational capacity to perform all necessary due diligence and project management services, including but not limited to unit design, construction and sale; provision of Housing and Urban Development (HUD) approved

homebuyer education; and ensuring ongoing affordability for future buyers through enforcement of the terms and conditions in documents of conveyance and security instruments; and

WHEREAS, Habitat oversees volunteer work crews and affords private contractors the opportunity to participate in the construction of housing units according to a competitive bid process, such process being independent of city or state public contracting procedures; and

WHEREAS, the construction of affordable housing places otherwise vacant land on the property tax rolls, which allows City to recover the value of the donated property through tax receipts over time; and

WHEREAS, Habitat's goal is to construct at least five (5) owner-occupied units over the four (4) year term of this Agreement.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promise hereafter stated, as follows:

1. RECITALS. The Recitals to this Agreement set forth above are hereby incorporated herein.
2. PURPOSE: This Agreement describes the respective responsibilities of each party in providing for the development of owner-occupied, affordable housing units within the City of Newport.
3. TERMS OF THIS AGREEMENT: This Agreement shall be effective on the date that it is signed by all parties. Unless extended as provided in this Section 3 or terminated earlier pursuant to Section 10, with the exception of Habitat's continuing obligations, the term of this Agreement shall be for a period of four (4) years. This Agreement may be extended for a period of one (1) year upon written mutual consent of all parties. Upon expiration or termination, this Agreement shall automatically be extended to govern Habitat's completion of any work previously initiated hereunder.
4. AFFORDABLE HOUSING DEFINED: For the purpose of this Agreement, the term "affordable housing" means housing constructed by or for Habitat, which is marketed and sold to an individual or family making between 40 and 80 percent of median family income and at least one household member employed in Lincoln County.
5. HABITAT RESPONSIBILITIES: Habitat will assign staff with knowledge and training in the development of affordable housing units to perform the following general duties:
 - A. Administrative Services
 - i. Coordinate projects;
 - ii. Develop and manage project budgets;
 - iii. Coordinate with other contracts (e.g. accounting, legal);
 - iv. Provide financing to potential homebuyers;
 - v. Conduct marketing efforts for the sale of each unit;

- vi. Provide or coordinate homebuyer training courses and manage the application process for prospective buyers; and
- vii. Maintain ongoing affordability of the owner-occupied units by recording terms and conditions in documents of conveyance and security instruments with resale restrictions satisfactory to the City, against each lot that is subject to a build and by enforcing said terms and conditions to ensure that the resale restrictions are applied to each subsequent sale for a period of 20-years from the date the homes are constructed.

B. Real Estate Development Services

- i. Obtain land use and building permits required for site development in accordance with City of Newport Ordinances;
- ii. Prepare all necessary contracting documents (RFP, contract, notices, etc.);
- iii. Oversee the contractor selection and award process;
- iv. Collect necessary documentation from selected contractor per contract terms;
- v. Manage construction from design, site preparation to occupancy of the units;
- vi. Perform routine progress meetings on site as required;
- vii. Maintain submittals and project documents;
- viii. Serve as single point of contact to the City, contractor, key stakeholders;
- ix. Ensure that land use/building permit and contract terms are satisfied;
- x. Provide regular project updates to the City and general public; and
- xi. Coordinate activities for sale of homes.

C. Additional duties will be performed as mutually agreed upon by Habitat and City to carry out the objectives of this Agreement.

6. CITY OF NEWPORT RESPONSIBILITIES: City agrees to provide the following resources to Habitat to facilitate construction of affordable housing on the Property:

- A. Through this agreement, the Newport City Council declares that the Property is not needed for public use and should be utilized for affordable housing for a period of at least 20 years consistent with Oregon Revised Statute 271.330, provided utilities and street improvements on the Property are protected for public use as described herein.
- B. City shall make the Property available to Habitat to construct affordable housing units at no cost. Property is to be transferred to Habitat on a lot-by-lot basis as affordable housing units are constructed with conveyance occurring at such time as Habitat obtains certificates of occupancy. Additional deed and sale terms beyond those required by this Agreement may be negotiated by the parties prior to transfer of an individual City lot to Habitat.
- C. Portions of the Property contain public utilities and street improvements, including Lot 7 and 8, Block 40 and Lot 10, Block 33 Case and Bayley's Second Addition to the City of Newport. City will allocate staff time to assist Habitat in reconfiguring the Property

and/or putting easements in place to ensure that utilities and street improvements remain under public ownership and control.

7. TIMING OF DEVELOPMENT: Habitat may initiate construction on a lot where public services on or adjacent to the lot have been placed on land, rights-of-way, or easements controlled by the City of Newport. Habitat shall obtain certificates of occupancy for each affordable housing unit within eighteen (18) months of the date a building permit is issued, unless an alternative timeline is authorized in writing by City.
8. DISPOSITION OF TRANSFERRED PROPERTY: Each City parcel conveyed to Habitat shall be subject to a deed restriction requiring that such property be used expressly for affordable housing purposes for a period of at least 20 years from the date a certificate of occupancy is issued. The deed restriction shall further include a reversionary interest in City, ensuring that ownership of the transferred property will return to City in the event that the use limitation, or any other term or condition, is violated.
9. AFFORDABILITY ASSURANCE: Once a certificate of occupancy is obtained for a unit, and the subject lot is transferred, Habitat agrees to record and enforce a trust deed against the lot that restricts resale to an amount attainable by an individual or family making 80% of median family income for a period of 20-years.
10. TERMINATION: This agreement may be terminated upon written mutual consent of all parties specifying the termination date, or by any party upon 30 days' prior written notice.
11. DISPUTE RESOLUTION: If any disputes, disagreements, or controversies arise between City and Habitat pertaining to the interpretation, validity, or enforcement of this Agreement, upon the request of City or Habitat, the dispute shall be submitted to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lincoln County Circuit Court, upon the request of either party. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.
12. WORKER'S COMPENSATION: Habitat and its subcontractors, if any, are subject employers under the Oregon Workers' Compensation laws and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers.
13. INDEMNITY:
 - A. Habitat shall hold harmless, indemnify, and defend City from any and all liability, actions, claims, losses, damages, or other costs including attorney fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may

be asserted by any person or entity arising from, during, or in connection with the performance of its duties described in this Agreement, except liability arising out of the sole negligence of the other. If any aspect of this indemnification shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the indemnification provision.

- B. City shall hold harmless, indemnify, and defend Habitat up to the limits of the Oregon Tort Claims Act, from any and all liability, actions, claims, losses, damages, or other costs including attorney fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during, or in connection with the performance of its duties described in this Agreement, except liability arising out of the sole negligence of the other. If any aspect of this indemnification shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the indemnification provision.

14. COMPLIANCE WITH NON-DISCRIMINATION REQUIREMENTS: Habitat will not unlawfully discriminate against any employee or person served in its performance of this agreement. Further, Habitat agrees to:

- A. Comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) in regard to persons served; and
- B. Adhere to Title VII of the Civil Rights Act of 1964 (42 USC 2000e) in regard to employees or applicants for employment; and
- C. Conform to the requirements of the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973; and
- D. Satisfy the requirements of the Americans with Disabilities Act; and
- E. Prevent any funds from this agreement from being used to sponsor, promote, or otherwise to engage in political activities.

15. ASSIGNMENT: Habitat may assign any of its responsibilities under this Contract upon receipt of City's prior written consent, which consent shall not be unreasonably withheld.

16. AMENDMENTS: No amendments to this Agreement shall be effective unless made in writing and signed by all parties. There are no understandings, agreements or representations, oral or written regarding this Agreement except as specified or referenced herein.

17. SEVERABILITY: If any court of competent jurisdiction shall hold any provisions of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

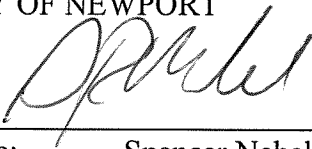
18. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
19. EXECUTION: This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same agreement. City shall provide each party with a set of all executed counterparts. By signature of their authorized representatives below, the parties to this agreement acknowledge that they have read this Agreement, understand it, and agree to be bound.
20. NOTICE: All notices required by this agreement must be in writing and delivered to the parties at the addresses set forth below.

Habitat for Humanity of Lincoln County
Executive Director
227 NE 12th Street
PO Box 1311
Newport, OR 97365

City of Newport
Community Development Director
169 SW Coast Highway
Newport, OR 97365


IN WITNESS WHEREOF, the parties hereto have executed this Memorandum on the dates show hereunder.

CITY OF NEWPORT

By: 
Name: Spencer Nebel
Title: City Manager
Address: 169 SW Coast Highway
Newport, OR 97365

Date: 07-21-15

HABITAT FOR HUMANITY

By: 
Name: Sally Bovett
Title: Executive Director
Address: 227 NE 12th Street
Newport, OR 97365

Date: 7/27/15

Approved as to form:



Steve Rich, City Attorney

Exhibit A
Habitat for Humanity
Land Donation Agreement



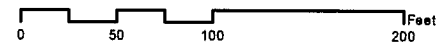
City of Newport
 Community Development Department
 166 SW Coast Highway
 Newport, OR 97365
 Phone: 1.541.574.0629
 Fax: 1.541.574.0644



Lots To Be Donated

Other City Owned Lots

Image Taken July 2013
 4-inch, 4-band Digital Orthophotos
 David Smith & Associates, Inc. Portland, OR



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